

Original

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

FILED

DEC 19 2002

MAILED 012 PM 12/19/2002  
FEDERAL COMMUNICATIONS COMMISSION

**DOCKET FILE COPY ORIGINAL**

In the Matter of	)	DA 02-2063
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 01-104
Table of Allotments, FM Broadcast Stations	)	RM-10103
(Auburn, Northport, Tuscaloosa, Camp Hill,	)	RM-10323
Gardendale, Homewood, Birmingham, Dadeville,	)	RM-10324
Orrville, Goodwater, Pine Level, Jemison, and	)	
Thomaston, Alabama	)	

To: The Commission

**MOTION FOR LEAVE TO SUPPLEMENT THE RECORD**

**PRESTON W. SMALL  
Timothy E. Welch, Esq.  
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List ABOVE

December 19, 2002

Preston W. Small (Mr. Small), by his attorney, hereby seeks leave to supplement the record of this proceeding. In support whereof, the following is respectfully submitted:


1) Mr. Small has previously sought protection from the Commission because other parties are making illegal threats to file civil actions against Mr. Small in order to prevent him from bringing information to the Commission. Early today we filed a pleading in response to Cox's and RSI's December 16, 2002 letter to the Secretary. Shortly thereafter Cox's FCC counsel sent via e-mail a threat which indicates that Cox is considering filing a bar complaint against me because I am purportedly violating some undefined "ethical constraints imposed upon attorneys." **Cox** does disclose what "ethical constraint" undersigned counsel has violated nor defined any duty which undersigned counsel owes Cox, RSI, or WNNX at the expense of Mr. Small. Nevertheless, because threats of civil action have been made in the past, in this proceeding and in MM Docket 98-104, which threats were intended to prevent Mr. Small from participating in proceedings before the FCC, including threats made by **Cox** itself, and because Mr. Small is currently defending against a meritless civil action in a Georgia federal district court, we are reporting this matter to the Commission. A copy of the e-mail correspondence is attached.

2) The appropriate response to a Commission filing is a) do nothing or b) file something somewhere. It is impermissible to threaten civil action against a party who desires to bring information to the Commission in order to try to dissuade said person from presenting information to the Commission. The other side, time and again, uses the threat of civil action when facing regulatory challenges. This is improper behavior which cannot be tolerated and the improper *conduct* is interfering with my representation of Mr. Small. Mr. Small has a right to make filings before the Commission. Others certainly have the right to oppose Mr. Small's position. Others do not, however, have the right to continually threaten Mr. Small, or his counsel, with civil actions, to try to dissuade Mr. Small from asserting his rights.

WHEREFORE, because Cox and RSI have supplemented the record in this proceeding via their December 16, 2002 letter, and because the information presented herein shows a pattern of the making of illegal threats against Mr. Small in a proceeding where there is a record of prior threats of civil action intended to prevent Mr. Small from presenting information to the Commission, the Commission should accept this supplemental information

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December 19, 2002

Respectfully submitted,  
PRESTON W. SMALL

  
\_\_\_\_\_  
Timothy E. Welch  
His Attorney

**Subject: Re: MM Docket 01-104**

**Date:** Thu, 19 Dec 2002 14:05:32 -0500

**From:** Tim Welch <welchlaw@earthlink.net>

**Organization:** Hill & Welch

**To:** creed@dlalaw.com, Roy Stewart <RSTEWART@fcc.gov>,  
Andrew Rhodes <ARHODES@fcc.gov>, Mark Lipp <mlipp@shb.com>

Thanks for your comments Kevin. My ethical consideration, as you know, is representing my client's interests zealously. From my view, nothing we have alleged is baseless. You disagree, apparently, but you don't wish to discuss your concerns in pleadings with the FCC, and you have chosen not to address the allegations which you allege are "baseless." That's your choice. but merely because you claim that X is baseless does not render X baseless, in fact. I have a record to support our arguments, you have your naked claim of baselessness. I'll take the record. Also, I don't view what I wrote as attacking the staff, I merely reported my view of the meeting and restated my concern that Mr. Small likely might have difficulties if he prevails in the Anniston proceeding if your side constructs facilities based upon my prior professional experience.

Once again your side has made a threat of some legal action being taken against our position, in order to prevent us from pursuing Mr. Small's interests. I am referring to your comment that I am violating some "ethical constraints imposed on attorneys" as if you are considering filing a bar complaint against me for my action of filing papers at the FCC, which filings are intended to protect my client's interests. Why is it that your side feels the need to threaten, and actually take, legal action outside the FCC? The impression is that your side thinks that its position at the FCC is weak, else your side wouldn't stoop to these tactics and the argument would stay where they belong, at the FCC. Regardless, while I appreciate you contacting me, even if vaguely, about your ethics concerns, I am unaware that I owe any duty to you or to Mr. Lipp in the FCC proceedings which supersedes the duty I owe to my client to represent my client zealously. I am filing papers in good faith based upon evidence and reasonable inferences drawn from the evidence, and filing based upon the requirements of the administrative process. You and Mr. Lipp, and BCI in the case in Georgia. merely mouth the word "abuse" without a shred of support.

Bridge Capital Investors and WNNX thought they would try steam rolling us in a Georgia courtroom and they have recently learned that we are not laying down like a dog because they instructed us to do so. In fact, my guess is that they, and others, are beginning to learn a tough lesson, honor your word when given, but if you don't choose to honor your word, don't sue the other guy, and certainly don't sue the non-breaching party in his own backyard. What we have going for us are the truth, the facts, the law, and an impartial decision maker. BCI's position, as best I can tell, amounts to nothing more than foot stomping, not unlike your e-mail and the numerous unsupported allegations of abuse which have been leveled against us.

As far as reviewing bizarre pleadings, let me refresh your memory that Cox, in Mr. Small's proceeding in 1998, supported Mr. Small, then later in the Alabama proceeding supported WNNX. That is a bizarre flip-flop. Or you can even review your December 16 letter to see how you attempted to change from what 'was to be the manner of going forward based upon the discussion at the December 10 meeting to something which benefited only your client. In fact, your e-mail to me is bizarre, and while I am surprised that a lawyer from a prestigious law firm like yours would try to convince me that I owe a duty to the attorneys on the other side at the expense of my client, I am responding, somewhat at length, with the hope that you will direct your energies to a better purpose.

In the future, please do not write to me to lecture with how you think I should represent my clients. If you have something worth while, by all means

contact me, but please don't clutter my time with this sort of drivel. Because you have threatened some sort of legal action against Mr. Small, and/or me. because of the pleading I filed today, with an apparent intent of keeping us from filing pleadings in the future, and because **of** the threats that your side has made in the past, and because my client is currently defending against BCI's wholly baseless contract claim, and because your comments were not presented in the context of settling any proceeding or with a request for confidentiality, I am forwarding this communication to the FCC for its review. After having experienced one frivolous law suit which was intended to prevent us from asserting Mr. Small's rights before the FCC, I am not about to stand idly by **to** field threats about another frivolous proceeding being filed against us. You made the threat, you can either respond or not. However, your threat is now a part of the record and we will bring the matter to the court of appeals, if need be, where there is a completely different set of relationships at work and we'll get a fair shake at justice.

Best Regards.

Tim

kreed@dlalaw.com wrote:

> I have to tell you that in 30 years of practice I have never seen a more  
> bizarre pleading beforr *the FCC*. **It** truly takes the prize. Moreover, *your*  
> totally baseless allegations attacking Cox, Susquehanna, **RSI** and Mark Lipp  
> and now the FCC staff are truly shameful. Obviously you are free to  
> represent your client as you see fit but there are ethical constraints  
> imposed on attorneys that you are unaware of or have chosen **to** ignore.  
>  
> -----Original Message-----  
> From: Tim Welch [<mailto:welchlaw@earthlink.net>]  
> Sent: Thursday, December **19**, 2002 10:14 **AM**  
> To: Roy Stewart; Andrew Rhodes; Mark Lipp; Kevin Reed  
> Subject: MM Docket 01-104  
>  
> FYI--this e-mail is not intended to alter response times if Cox and RSI  
> wish to respond.

CERTIFICATE OF SERVICE

I hereby certify that I have this 19<sup>th</sup> day of December 2002 served a copy of the foregoing MOTION FOR LEAVE TO SUPPLEMENT THE RECORD by First-class United States mail, postage prepaid, upon the following:

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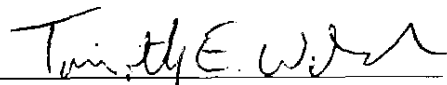
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